

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
SOUTHERN DIVISION  
In Admiralty  
No. 7:22-CV-47-D

JAN BRITT LYNN, Administratrix of Estate )  
of Megan Allison Lynn, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
FERSTER ELECTRIC, LLC, )  
 )  
Defendant. )

**ORDER**

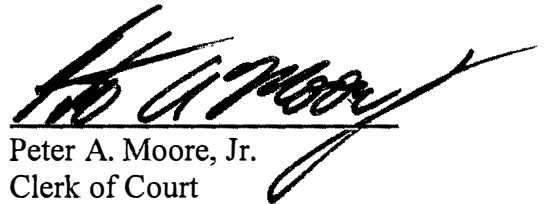
This matter is before the clerk on plaintiff's motion for entry of default [DE-10] against defendant, filed May 24, 2022. Plaintiff served defendant with the motion on June 20, 2022 [DE-11]. Defendant has not responded to the motion.

Rule 55 of the Federal Rules of Civil Procedure provides: "When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default." Fed. R. Civ. P. 55(a). Prior to entry of default, a plaintiff must show that a defendant was properly served with the summons and complaint as required by Rule 4 of the Federal Rules of Civil Procedure. Without being properly served, a defendant has no obligation to file an answer or appear in this action. See Maryland State Firemen's Ass'n v. Chaves, 166 F.R.D. 353, 354 (D. Md. 1996) ("It is axiomatic that service of process must be effective under the Federal Rules of Civil Procedure before a default or a default judgment may be entered against a defendant."), Henderson v. Los Angeles Cnty., No. 5:13-CV-635-FL, 2013 WL 6255610, at \*1 (E.D.N.C. Dec. 4, 2013) (explaining that "a defendant's duty to respond to a complaint only arises upon proper service of process" and

therefore a “plaintiff must show, by affidavit or otherwise, that proper service of process has been effected before default may be entered”); see also Fed. R. Civ. P. 12(a)(1)(A).

Here, plaintiff filed the affidavit of counsel [DE-10-1], which in turn relies on the previously filed proof of service [DE-5]. The proof of service shows the summons, which are addressed to “Ferster Electric, LLC, Matthew E. Ferster, Registered Agent, 4829 Bridgers Road, Shallotte, NC 28470.” The proof service states that the server served “Ferster Electric, LLC” and specifically states: “I personally served the individual at 927 Seaside Road, Ocean Isle Beach, NC on 3-29-22.” The proof of service does not specify which individual was served. Under these circumstances, where the proof of service is silent as to which individual was served on behalf of Ferster Electric, LLC, the clerk cannot find that the record establishes proper service on defendant under either Fed. R. Civ. P. 4 or N.C. Gen. Stat. § 1A-1, Rule 4(j). Accordingly, the motion for entry of default [DE-10] is DENIED.

SO ORDERED. This the 22 day of July, 2022.

  
Peter A. Moore, Jr.  
Clerk of Court